SEARCH AND SEIZURE

Office of the Staff Judge Advocate
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Search and Seizure Problem

- Recently been a brutal killing in the local area with an ice hammer. Theft in the barracks--A VCR, TV and video tapes were stolen. Sgt Slaughter reports that he saw Cpl Campbell steal the property. Your SNCO goes to the barracks (Holiday Inn Style) to Cpl Campbell's room, knocks, hears no answer, and enters with the Duty's key. Your SNCO finds and seizes the stolen items, also finds a bag of Ecstasy tablets on the table, and inside Cpl Campbell’s dresser is a bloody ice hammer next to a diary describing the killing. Was the search / seizure lawful?

NO-- CPL Campbell had a reasonable expectation of privacy in his BEQ room. The search was Unlawful. All items seized would be inadmissible at a court-martial.

KNOWLEDGE IS POWER

- IGNORANCE IS NEVER AN EXCUSE UNDER THE LAW -- AN ILLEGAL SEARCH WILL POTENTIALLY THROW A CASE OUT OF COURT.

ENABLING LEARNING OBJECTIVES

- DEFINITION OF PROBABLE CAUSE
- LEGAL OBJECTS OF A SEARCH
- TYPES OF SEARCHES

ENABLING LEARNING OBJECTIVES

- LIMITATIONS OF AN INSPECTION
- EVIDENCE SUBJECT TO SEIZURE
- PURPOSE OF CHAIN OF CUSTODY

THE FOURTH AMENDMENT TO THE CONSTITUTION

- **"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."**

THE FOURTH AMENDMENT TO THE CONSTITUTION

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THE REASONABLENESS REQUIREMENT:

- Knock and announce. Even if based upon a warrant or search authorization and probable cause, a search must be conducted in a reasonable manner.

DEFINITION

- PROBABLE CAUSE:
  - REASONABLE BELIEF THAT A CRIME HAS BEEN COMMITTED, AND ITEMS CONNECTED WITH THE CRIME, OR EVIDENCE OF THE CRIME, ARE LOCATED ON A CERTAIN PERSON OR IN A CERTAIN PLACE

DEFINITION

- PROBABLE CAUSE: (continued)
  - MUST BE BASED ON PERSONAL KNOWLEDGE OR INFORMATION PROVIDED UNDER OATH/AFFIRMATION
  - MUST BE CURRENT

PROBABLE CAUSE AND STALENESS

- U.S. v. AGOSTO, 43 M.J. 745 (A.F. Ct. Crim. App. 1995). Accused was convicted of receiving oral sex from a 14 yr old girl. The girl told NCIS that Agosto took pictures of her. The court held that PC existed for search of accused's dormitory room even though 3½ months elapsed between offense and search. Items sought were not consumable and were of a nature to be kept indefinitely.

How do you think the courts would rule on a case where you received an anonymous report that 3 months ago PVT POTHEAD smoked dope with
PFC DO-GOOD and the CO executes a PC search urinalysis?

THE SEARCH WOULD PROBABLY FAIL FOR STALENESS

PARTICULARITY

- WARRANT – MUST STATE THE PARTICULAR PLACE TO BE SEARCHED AND THE PARTICULAR ITEMS BEING SOUGHT.

WHEN DOES THE FOURTH AMENDMENT APPLY?

- GOVERNMENT INTRUSIONS
- WHERE A REASONABLE EXPECTATION OF PRIVACY EXISTS (HOME, BEQ ROOM?, MILITARY HOUSING, FOOTLOCKER)

CONSEQUENCES OF AN ILLEGAL SEARCH

- EXCLUSIONARY RULE
- "FRUITS OF THE POISONOUS TREE"

DEFINITION

- AUTHORIZATION TO SEARCH:
  - EXPRESS PERMISSION, ORAL OR WRITTEN, ISSUED BY THE CO, TO SEARCH A PERSON OR AREA FOR EVIDENCE AND SEIZE IT

LEGAL OBJECTS OF A SEARCH

- INSTRUMENTS OF CRIME- Items used to commit a crime.
- EVIDENCE OF CRIME- Items used to link, but not instruments.
- FRUITS OF CRIME- Items in possession of the accused as a result of the crime.

LEGAL OBJECTS OF A SEARCH

- CONTRABAND- Illegal items
- GOVERNMENT PROPERTY
- PERSONS- When probable cause exists

TYPES OF SEARCHES

- CONSENT SEARCH
- SEARCH AUTHORIZED BY CO
- SEARCH PURSUANT TO WARRANT
- EXIGENCY SEARCH
- INCIDENT TO APPREHENSION
- SEARCH OF GOVERNMENT PROPERTY
- BODY VIEWS AND INTRUSIONS

CONSENT SEARCH

- ALWAYS ASK FOR CONSENT
- PROBABLE CAUSE IS NOT REQUIRED
- MUST BE VOLUNTARY!!!!!!!!!!
- CONSENT MAY BE LIMITED

CONSENT SEARCH

- **WHO CAN CONSENT?**

- ACCUSED ASKED ANOTHER SERVICEMEMBER TO HOUSE SIT HIS OFF-BASE QUARTERS FOR THREE WEEKS WHILE HE WAS ON LEAVE.
  - HOUSE SITTER HAD SUFFICIENT AUTHORITY OVER QUARTERS TO CONSENT TO SEARCH

SEARCH AUTHORIZED BY THE CO

- POWER TO AUTHORIZE
- BASIS FOR AUTHORIZATION
- SCOPE OF THE SEARCH
- ISSUING THE AUTHORIZATION TO SEARCH
- CONDUCT OF SEARCH

SEARCH WARRANT

- CIVILIAN AUTHORITIES NEED TO BE CONTACTED
- MILITARY PERSONNEL MAY OBSERVE, BUT NOT TAKE PART IN SEARCH

EXIGENCY SEARCH

- IMMEDIATE ACTION IS NECESSARY TO PREVENT THE REMOVAL OR DESTRUCTION OF EVIDENCE
- BASED ON PROBABLE CAUSE
- NO SEARCH AUTHORIZATION REQUIRED
- BURDEN OF PROOF--FREEZE THE SITUATION WHERE POSSIBLE

EXIGENCY SEARCH

- FREEZE THE SITUATION
- EXECUTE A SEARCH AUTHORIZATION
- CONSIDER EXCEPTIONS:
  - OPERABLE AUTOMOBILE
  - REPORT THAT ACCUSED USED DRUGS, THROUGH EXPERIENCE AND COMMON SENSE DELAY IN WAITING FOR SEARCH AUTHORIZATION COULD RESULT IN LOSS OF EVIDENCE

SEARCH INCIDENT TO A LAWFUL APPREHENSION

- MUST HAVE PROBABLE CAUSE TO APPREHEND
- SCOPE OF THE SEARCH -- "WINGSPAN"

SEARCHES OF GOVERNMENT PROPERTY

- NO REASONABLE EXPECTATION OF PRIVACY IN GOVERNMENT PROPERTY
- OFFICES AND GOVERNMENT VEHICLES MAY BE LEGALLY SEARCHED WITHOUT CONSENT OR PROBABLE CAUSE
- E-MAIL??

BODY VIEW AND INTRUSIONS

- EXTRACTION OF BODY FLUIDS
- INTRUSIONS FOR VALID MEDICAL PURPOSES

SEARCH v. INSPECTION

- SEARCH: FIND EVIDENCE AND USE TO PROSECUTE
  **FOCUS IS PROSECUTORIAL
- INSPECTION: FIND PROBLEMS AND CORRECT
  **FOCUS IS ON GOOD ORDER, DISCIPLINE, AND MORALE

INSPECTIONS

- TWO TYPES:
  - (1) THOSE NOT INVOLVING AN INSPECTION FOR CONTRABAND
  - (2) THOSE WHICH INCLUDE SUCH AN INSPECTION FOR CONTRABAND

INSPECTIONS
(aka HEALTH AND COMFORT)

- PURPOSE:
  - ENSURE UNIT SECURITY,
  - MILITARY FITNESS; OR
  - GOOD ORDER AND DISCIPLINE
- EXAMPLES:
  - STATE OF READINESS
  - LIVING CONDITIONS
  - SANITATION
  - PERSONNEL FIT AND READY FOR DUTY

INSPECTION FOR CONTRABAND

- CAN'T BE A SEARCH IN DISGUISE!
- GENERALLY THEY MUST BE SCHEDULED
- MAY BE CONSIDERED A SEARCH IF:
  - THE EXAMINATION WAS DIRECTED IMMEDIATELY FOLLOWING A REPORT OF A SPECIFIC OFFENSE IN THE UNIT AND THE INSPECTION WAS NOT PREVIOUSLY SCHEDULED;

INSPECTION FOR CONTRABAND

- WILL BE CONSIDERED A SEARCH IF:
  - SPECIFIC INDIVIDUALS ARE SELECTED FOR EXAMINATION; OR CERTAIN PERSONS EXAMINED ARE SUBJECTED TO SUBSTANTIALLY DIFFERENT INTRUSIONS DURING THE SAME EXAMINATION.

INSPECTION POLICIES

- PUBLISH AN INSPECTION POLICY
- SCHEDULE INSPECTIONS -- CAN BE UNANNOUNCED
- DETERMINE SCOPE

INVENTORY

- CONDUCT AN INVENTORY WHEN A MARINE: IS:
  - UA, HOSPITALIZED, OR
  - PLACED IN PRE-TRIAL CONFINEMENT
- WARNING: INVENTORY SHOULD NOT BE A QUEST FOR EVIDENCE AND ALL INVENTORIES SHOULD BE CONDUCTED SIMILARLY.

SEIZURE

- IF YOU HAVE A LEGAL RIGHT TO BE IN A CERTAIN PLACE, THEN EVIDENCE OF A CRIME MAY BE SEIZED

SEIZURE

- EVIDENCE SUBJECT TO SEIZURE:
  - ABANDONED PROPERTY
  - GOVERNMENT PROPERTY
  - OTHER PROPERTY:
  - AUTHORIZED BY SEARCH AUTHORIZATION
  - PROBABLE CAUSE BASED ON EXIGENCY
  - PLAIN VIEW

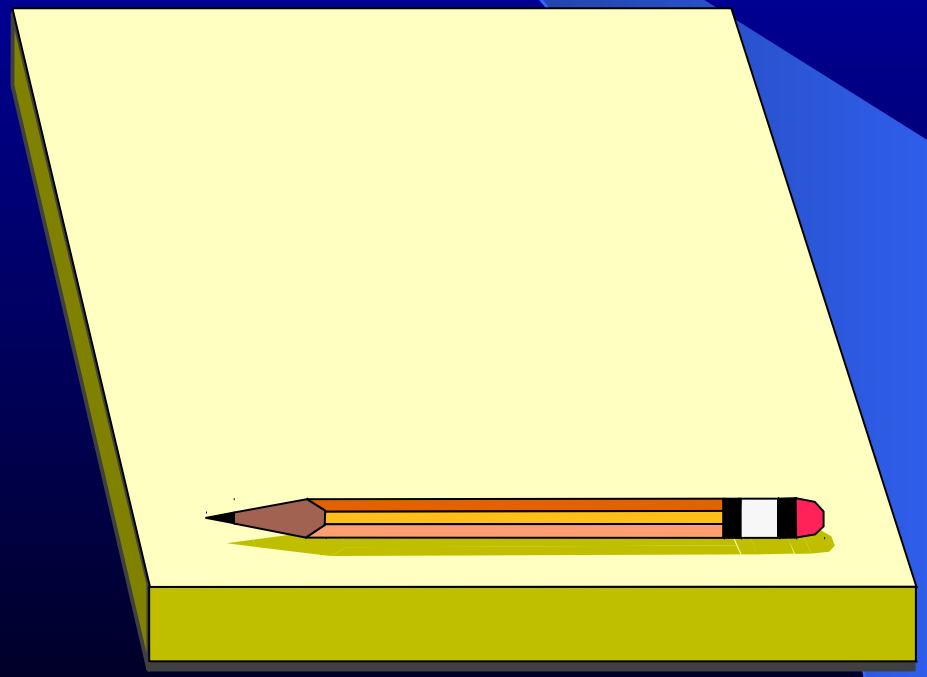
PRESERVING EVIDENCE

- ONCE THE EVIDENCE IS SEIZED:
  - MARK THE EVIDENCE
  - ESTABLISH A CHAIN OF CUSTODY (NCIS, CID)

ARTICLE 31, UCMJ

- WHO SHOULD BE WARNED: SUSPECT
- WHO GIVES THE WARNINGS: YOU AS A GOV'T AGENT
- WHEN ARE THEY NECESSARY: INCRIMINATING STATEMENT
- INVOKES RIGHTS: STOP ALL QUESTIONING

QUESTIONS????



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